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REQUEST FOR THE INCLUSION OF AN ADDITIONAL ITEM IN THE AGENDA OF THE FORTY-EIGHTH SESSION

REVIEW OF THE PROCEDURE PROVIDED FOR UNDER ARTICLE 11 OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS

Letter dated 16 September 1993 from the representatives of the Permanent Missions of Australia, Benin, France and Ireland to the United Nations addressed to the Secretary-General

On instructions from our Governments we have the honour to request, in accordance with article 15 of the rules of procedure of the General Assembly, the inclusion in the agenda of the forty-eighth session of the General Assembly of an additional item entitled "Review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations".

In accordance with rule 20 of the rules of procedure of the General Assembly an explanatory memorandum is annexed to the present letter.

(Signed) Mr. Richard BUTLER, AM
Ambassador Extraordinary
and Plenipotentiary,
Permanent Representative of
Australia to the United Nations

(Signed) Ayité J.-C. KPAKPO
Chargé d'affaires a.i. of the
Permanent Mission of Benin to
the United Nations

(Signed) Mr. Jean-Bernard MERIMEE
Ambassador Extraordinary
and Plenipotentiary,
Permanent Representative of
France to the United Nations

(Signed) Mr. Francis Mahon HAYES
Ambassador Extraordinary
and Plenipotentiary,
Permanent Representative of
Ireland to the United Nations

ANNEX

Explanatory memorandum

1. The Administrative Tribunal of the United Nations is declared by its Statute to be (Article 2) "competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members".

2. A procedure for review of the judgements of the Administrative Tribunal is provided for under Article 11 of the Statute (attached as an appendix to this memorandum). Paragraph 4 of the Article establishes a Committee on Applications, sets out its composition and authorises it to request advisory opinions of the International Court of Justice. Para. 1 of the Article enables a Member State, the Secretary-General or a person affected by the judgement (as in the para. identified) to ask the Committee, on grounds specified in the para, to request an advisory opinion of the Court in the matter. This is the only procedure for review of the judgements of the Tribunal by another body.

3. In fact, since the procedure was established in 1955, the Committee has considered over 80 applications but has requested only three advisory opinions of the International Court of Justice: Fasla (ICJ Reports 1973, p. 166); Mortished (ICJ Reports 1982, p. 325); Yakimetz (ICJ Reports 1987, p. 18). In none of these cases did the International Court find that the Administrative Tribunal had erred.

4. In recent years, several members of the Committee on Applications have, in the course of the Committee's deliberations, voiced criticisms of the procedure under Article 11 as not furnishing an adequate means for review of the judgements of the Tribunal. Individual members of the International Court, in the cases mentioned above, have likewise expressed dissatisfaction with the procedure. Criticism has also been voiced in the Fifth Committee of the General Assembly.

5. Following these criticisms informal open-ended consultations were undertaken in which several delegations participated. These participants indicated unanimously a deep dissatisfaction with the procedure under Article 11. A clear majority felt that the procedure should be abolished as it would not be feasible to render it adequate by adjusting Article 11.

There was also unanimity that if that procedure were to be abolished some other mechanism which would assist practically in the resolution of staff employment problems should be established.

6. In the light of the foregoing the States signatory to the letter to which this memorandum is attached are of the opinion that this matter should be addressed by the General Assembly, and suggest that this should be done under the additional item they propose in that letter for inclusion in the agenda of the forty-eighth session of the General Assembly. They would wish to see the item referred to the Sixth (Legal) Committee.

APPENDIX

ARTICLE 11

1. If a Member State, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal (including any one who has succeeded to that person's rights on his death) objects to the judgement on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgement make a written application to the Committee established by paragraph 4 of this article asking the Committee to request an advisory opinion of the International Court of Justice on the matter.

2. Within thirty days from the receipt of an application under paragraph 1 of this article, the Committee shall decide whether or not there is a substantial basis for the application. If the Committee decides that such a basis exists, it shall request an advisory opinion of the Court, and the Secretary-General shall arrange to transmit to the Court the views of the person referred to in paragraph 1.

3. If no application is made under paragraph 1 of this article, or if a decision to request an advisory opinion has not been taken by the Committee, within the periods prescribed in this article, the judgement of the Tribunal shall become final. In any case in which a request has been made for an advisory opinion, the Secretary-General shall either give effect to the opinion of the Court or request the Tribunal to convene specially in order that it shall confirm its original judgement, or give a new judgement, in conformity with the opinion of the Court. If not requested to convene specially the Tribunal shall at its next session confirm its judgement or bring it into conformity with the opinion of the Court.

4. For the purpose of this article, a Committee is established and authorized under paragraph 2 of Article 96 of the Charter to request advisory opinions of the Court. The Committee shall be composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. The Committee shall meet at United Nations Headquarters and shall establish its own rules.

5. In any case in which award of compensation has been made by the Tribunal in favour of the person concerned and the Committee has requested an advisory opinion under paragraph 2 of this article, the Secretary-General, if satisfied that such person will otherwise be handicapped in protecting his interests, shall within fifteen days of the decision to request an advisory opinion make an advance payment to him of one-third of the total amount of compensation awarded by the Tribunal less such termination benefits, if any, as have already been paid. Such advance payment shall be made on condition that, within thirty days of the action of the Tribunal under paragraph 3 of this article, such person shall pay back to the United Nations the amount, if any, by which the advance payment exceeds any sum to which he is entitled in accordance with the opinion of the Court.